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File

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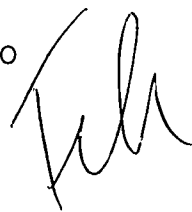
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January 10, 1995

MEMORANDUM FOR THE ATTORNEY GENERAL AND CAROL RASCO

FROM: RON KLAIN 
SUBJECT: CRIME BILL STRATEGY 

With the first Congressional hearing on the 1995 Crime Bill just about one week away (January 18), we still lack closure on an overarching strategy for dealing with this legislation. Here is my latest attempt, building upon my previous memorandum (November 22), to offer a proposed strategy.

REPUBLICAN STRATEGY and TIMETABLE

The Republicans in both the House and the Senate are moving ahead toward early February floor action on a revised Crime Bill; Committee action will start later this month. While there is a chance that this early Republican effort will entail only a subset of the crime issues (both Hatch and Hyde have talked about a preliminary Crime Bill that addresses only habeas reform and death penalty procedures), we need to be prepared for dealing with the full-scale Republican proposal within the next few weeks.

To refresh your recollection, the Republican Crime Bills (now introduced in both the House and Senate, and substantially similar), change the 1994 Crime Act, by:

- (1) Eliminating the 100,000 cops program, to be replaced by a "Law Enforcement Block Grant," that localities can use to hire cops, pay overtime, buy police equipment, beef up school security, or fund citizen watch groups;
- (2) Eliminating most of the crime prevention programs, with some of the funding (about \$1 billion) moved into the "Law Enforcement Block Grant," and another chunk (\$2 billion) reallocated to prisons;
- (3) Adding tough habeas corpus and exclusionary rule reform, designed to sharply limit death row appeals, and broaden the use of illegally seized evidence in courts;
- (4) Federalizing all crimes committed with guns, coupled with stiff mandatory minimum sentences for those offenses;

- (5) Toughening truth in sentencing standards for states that want prison grants, along with limits on prisoner lawsuits; and
- (6) Adding various other provisions on victims rights and criminal alien deportation (that we generally support).

As you can see, it is no exaggeration to say that the President's program to put 100,000 more police on the streets is in substantial danger. And, as I pointed out in my November 22nd memo, there is a substantial risk that constituency groups who supported us last year -- Mayors, county officials, law enforcement officers -- will not be with us this time.

PROPOSED REVISED STRATEGY

As you may recall, in November, I proposed a strategy of:

- (1) Promising to work with the Republicans on "going forward," but vigorously opposing any efforts to "go backward;"
- (2) Thereby supporting a 1995 Crime Bill, but threatening to veto proposals to repeal the assault gun ban or the 100,000 cops program; and
- (3) Offering our own version of a 1995 Crime Bill as an alternative to the Contract Bill.

While I still would prefer to see us pursue this course, based on the negative reaction it received, I have prepared this alternative strategy instead. Under this new plan, we would:

- (1) Drawing a tough line around core principals. The President would make a public statement that he strongly opposes any efforts to repeal the tough penalties, assault weapons ban, or 100,000 cops program included in the Crime Bill. There will be no going back on these achievements.
 - We would criticize their plan for Block Grants in lieu of 100,000 cops as "Super Pork;"
 - We would seek a close alliance with law enforcement on the three core points (protecting penalties, the gun ban, and the COPS program) outlined above.
- (2) Taking a lower-key administration stand on the 1995 Bill. DoJ would submit for clearance a formal statement on the legislation. (This will be ready by Friday.) In it, we would announce our support for some elements of the new Crime Bill (e.g., victims' rights, alien deportation, tougher truth in sentencing), our opposition to other proposals (such as cuts in prevention and exclusionary rule reform), and our very strong opposition to any efforts to cross the "tough line" discussed above.

- (3) Authorizing DoJ to engage on the 1995 Bill -- but keeping the President out of the fight. With (1) and (2) in hand, DoJ would take the lead in engaging on the bill -- but the White House would largely be spared involvement.
- The Attorney General would begin meeting with pivotal House and Senate moderate Republicans.
 - We would conduct strategy meetings with House and Senate Democratic leaders.
 - We would attempt to rally constituency groups and key outside leaders in our cause.
- (4) Continuing to implement the 1994 Act. We would continue to implement the Crime Act, which will continue to build support for its current formulation. Events and announcements consistent with sound implementation of the Bill would be conducted.
- (5) Highlighting Crime Fighting as Part of the President's Middle Class Agenda. While the day-to-day engagement on the Crime Bill would be left to the Attorney General and other surrogates, the President would step up his public profile on the crime issue, by doing more "crime events" and by emphasizing crime fighting as part of the middle class agenda:
- We have already submitted eight possible Presidential events for the next eight weeks;
 - Several of the events relate to the 1994 Crime Bill, without putting the President directly into the 1995 debate (e.g., swearing-in police paid for by the Crime Bill);
 - Other events will not be Crime Bill related -- for example, issuing executive orders, meetings with federal prosecutors, and the like.
- Our middle class message cannot be complete without an aggressive Presidential focus on this leading concern of middle class Americans.

ANALYSIS OF PROPOSED STRATEGY

The above strategy is a middle ground between a more aggressive approach (on the one hand), and two more limited options (on the other).

A. More Aggressive Posture

The more aggressive approach would have more appeal to liberals in Congress, by putting our defense of prevention on an equal plane with our defense of the rest of the Bill. It would also be a frontal assault on the whole idea of an additional Crime Bill, as unnecessary in light of the 1994 Bill.

Of course, the most aggressive approach is a full-scale stand for principle, and most likely to have elite opinion support. And, as long as we care little about the final product emerging from the Hill -- or care little about having the President veto a highly-popular bill -- this is an issue on which we could side with Congressional liberals whom we will cross on other matters.

But this more aggressive approach is untenable in terms of winning in the current Congress, and out of step with the middle class agenda. Moreover, it would require far more extensive Presidential involvement to have any prospect of success.

B. More Limited Defense

On the other hand, if we were single-mindedly concerned with protecting the 100,000 cops program, than a more limited approach would be better; this approach would invest all of our resources in protecting the 100,000 cops, and would not make an effort to defend the prevention programs as well.

Such an approach would address the natural tendency of the press corps to play the fight over any Crime Bill as the Republicans being "tough on crime" vs. Democrats "fighting for prevention" -- they will be inclined to "miss" our stand for the police program, and describe us as fighting for prevention only. In response, to save the COPS program, we could focus our rhetoric clearly on **that** program -- making it clear that **we** are pushing the tougher on crime position on that issue.

However, by doing so we would abandon the crime prevention programs that we fought so hard to get, so quickly after we won them. We would be accused of lacking principles or convictions. And if we give the COPS program heightened emphasis in our effort to fight for both it and prevention, we may achieve some of what this, more stark strategy, aims at as well.

C. Remaining Detached

Finally, we could stay above the fray, saying that we supports last year's Crime Bill but do not object to Congressional efforts to improve it -- largely, staying out of the fight. This strategy would envision the President signing the Bill that Congress passes (assuming that this Bill does not include an assault ban repeal).

On the plus side, this approach does not involve taking new positions -- and thereby avoids alienating Congressional Democrats because we do not affirmatively back any changes in the Crime Bill. And it "looks presidential," because the President stays above the fray.

But if not quite a betrayal, Congressional Democrats will view this as an **abandonment** -- a repeat of our 1993 "hands off" approach to crime bills -- and it means that a repeal of 100,000 cops program and all prevention programs is assured.

Finally, and perhaps more unsatisfactorily, this approach concedes the crime issue and the Crime Bill to the GOP -- and ends with an embarrassing reversal, when the President ultimately signs the Crime Bill that Congress passes.

RECOMMENDATION

I recommend that we pursue the policy outlined above, and that a Justice Department working group be assembled to implement this strategy -- subject to coordination with the White House Domestic Policy, Legislative, and Communication offices.

LAW / JUDICIARY

Republican Crime Bills Head for House Floor

Judiciary panel OKs limit on death row appeals, more money for state prison construction

With last year's acrimonious crime bill debate still echoing in corners of the Capitol, Republicans have taken the first step toward ripping up portions of that law and replacing it with their own package.

The House Judiciary Committee has sent six anti-crime bills to the House floor, where debate is expected to begin the week of Feb. 6. Together, the measures make up most of the GOP's crimefighting pledges in the House GOP's "Contract With America." They would limit death row appeals, increase federal grants for state prison construction and collapse last year's police hiring and crime prevention grants into a single, smaller block grant program. (*Bills*, p. 368; *Status of Contract*, p. 336)

It is a bitter experience for Democrats, who counted last year's crime bill (PL 103-322) among their major legislative accomplishments.

Charles E. Schumer, D-N.Y., a principal author of last year's law, was one of several Democrats who suggested Republicans were simply lashing out to erase a political success for President Clinton and his party. "It's a political one-upmanship game," he said.

But Republicans say the 1994 law, which relies on congressional preferences and federal agencies to guide the distribution of billions of crime-fighting dollars, is an example of the wrongheaded thinking by Democrats that persuaded voters to put the GOP in charge of both chambers of Congress. They are confident their revisions represent what voters want.

"I think we have adopted a new direction in crime-fighting, putting more responsibility and resources in the hands of local government," said



House Judiciary Committee counsel Alan F. Coffey Jr. confers with Chairman Hyde at Jan. 31 markup.

BOXSCORE

Bills: Crime bill revisions (formerly HR 3).

Latest action: The House Judiciary Committee approved four more anti-crime bills the week of Jan. 30. (*Bills*, p. 368).

Next likely action: House floor.

Background: The bills would rewrite portions of the 1994 anti-crime law (PL 103-322).

Reference: Weekly Report, pp. 290, 211.

Judiciary Committee Chairman Henry J. Hyde, R-Ill.

Approval of the six bills came after three lengthy drafting sessions the week of Jan. 30 — and an earlier Jan. 27 session — that yielded vigorous debate but few substantive changes to the GOP-sponsored proposals.

Lawmakers did adopt a significant

new provision to require that the federal government reimburse states for hundreds of millions of dollars they spend each year to incarcerate illegal aliens. That Democrat-sponsored proposal won enough GOP votes to prevail.

But most votes fell largely along party lines, with Democrats defending last year's product and Republicans rejecting their arguments and their amendments.

"It's too early to expect fissures in the Republican monolith," said ranking Democrat John Conyers Jr. of Michigan. Conyers said he hopes some such divides will open when the bills reach the House floor.

But the general pattern in the Judiciary markup, in which some Democrats joined a united GOP bloc to support the bills as presented, reveals some of the political advantage Republicans enjoy on these issues.

And Rep. Bill McCollum, R-Fla., is optimistic about their prospects before the full House. "I think we will win everything when we go to the floor," said McCollum, the lead author of the GOP bills. "Virtually everything," he added quickly. Even some critics of the Republican proposals believe the chance to derail them lies in the Senate or in final conference negotiations.

McCollum said the leadership plans to begin floor debate on the crime package the week of Feb. 6, with the victim restitution (HR 665) and exclusionary rule (HR 666) measures likely to be up first.

Shifting the Money

In last year's crime debates, lawmakers struggled over how much money to allocate to police, prisons and prevention.

Republicans disliked the final result and now propose to rework the balance through two of their bills. The

By Holly Idelson

Proposed Crime Law Revisions

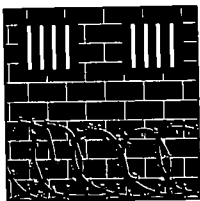
The seven GOP-sponsored crime proposals that formerly made up HR 3 would rewrite portions of the \$30.2 billion 1994 crime law (PL 103-322) and add new provisions. They would:

• **Police and prevention (HR 728).** Create a \$10 billion block grant program for crime reduction in place of three sets of grant programs created by the 1994 law: police hiring (\$8.8 billion), drug courts (\$1 billion) and social programs to prevent crime (\$4 billion). The bill would not disturb the fiscal 1995 appropriations for these programs — primarily \$1.3 billion for police hiring.



The bill specifies the money can be spent on certain programs, such as police hiring or school security equipment. Other programs, including prevention measures, could also qualify as long as they serve the general goals of reducing crime. The money would go directly to local government officials. The House Judiciary Committee approved the bill 21-13 on Feb. 2.

• **Prisons (HR 667).** Increase federal grants for state prison construction from last year's \$7.9 billion to \$10.5 billion, but attach more stringent conditions to the aid. Half the money would go for grants to states that can show that they have increased prison sentences and prison time actually served by violent offenders. The other half would be available for states with even stronger "truth-in-sentencing" policies, such as requiring that violent offenders serve at least 85 percent of their sentences. The original GOP provision would have required appropriators to fully fund prison grants before funding other crime programs. Sponsors dropped that mandate when they broke HR 3 into seven pieces.



They also added language — not in HR 3 — limiting court-ordered settlements in lawsuits on prison conditions. Those restrictions supplemented existing provisions to curtail inmates' ability to sue over their living conditions. The panel approved the bill, 23-11, on Feb. 1.

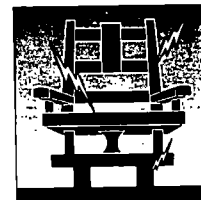
• **Exclusionary rule (HR 666).** Allow prosecutors to use evidence obtained improperly, including in a search conducted without a warrant, provided that police had reason to believe the search was legal. The proposal aims to limit situations in which evidence of criminal wrongdoing is excluded in court because it is judged to have been gathered in violation of constitutional guarantees against unreason-

able searches. The provision, known as the "good faith" exception to the so-called exclusionary rule, is already in practice for cases in which a search warrant is later found to be invalid. The measure was approved 19-14 on Jan. 27.

• **Death penalty (HR 729).** Restrict prisoners' ability to file habeas corpus petitions, in which they challenge the constitutionality of their sentences in federal court after they have exhausted direct appeals. The bill would set time limits for prisoners to file such petitions — generally two years for federal and one year for state convictions.

States that agree to provide competent counsel for post-conviction death penalty proceedings would operate under tighter deadlines for prisoners to file appeals as well as for court action. The bill would generally limit prisoners to one such petition.

It would authorize federal grants to help pay state legal costs for federal appeals in death penalty cases. It also would alter federal death penalty sentencing procedures to make it more likely that the death penalty will be invoked. The panel approved the measure 24-10 on Feb. 1.



• **Victim restitution (HR 665).** Mandate that those convicted of a federal crime provide restitution to their victims. These orders are currently optional for federal courts in most cases. The bill also would give federal courts the option of ordering restitution for injured people other than the victim. The bill was approved by voice vote Jan. 27.

• **Criminal aliens (HR 668).** Strengthen measures in the 1994 crime law and other laws to provide for the swift deportation of aliens who commit crimes and to crack down on alien smuggling. During markup, lawmakers added a controversial provision requiring the federal government to reimburse states for the costs of incarcerating illegal aliens as of fiscal 1996. The 1994 law made those payments mandatory as of fiscal 2004. The measure was approved 22-8 on Jan. 31.

• **Mandatory minimum sentences (draft language in HR 3).** A seventh piece of the GOP crime package would impose a federal mandatory minimum sentence for knowingly carrying, using or discharging a gun in the course of a serious violent felony or serious drug offense. However, Republican leaders postponed consideration of this provision so that it can be debated along with proposals to repeal last year's ban on certain semiautomatic assault-style weapons.

—Holly Idelson

first (HR 667) would increase federal grants for prison construction from \$7.9 billion to \$10.5 billion, while also imposing tougher sentencing guidelines to qualify for the aid.

The second (HR 728) would roll three sets of grant programs in the 1994 crime law — for police hiring,

drug courts and prevention programs — into a single, \$10 billion block grant that local officials could spend on virtually any program aimed at reducing crime.

The net result would be to shift about \$2.5 billion in authorized spending toward prison construction, and

force police hiring and prevention programs to compete with each other at the local level for a somewhat smaller pot of combined funding. Such programs might become winners or losers depending on what local officials choose.

Debate came first on the prison bill, which Republicans said would

make critical strides toward keeping repeat violent offenders off the streets.

"That's crime prevention, putting criminals in jail ... where they can't continue to rape and rob," said Fred Heineman, R-N.C., a freshman committee member and a former police chief.

Democrats found several faults with the proposal. They said the tough sentencing requirements were too rigid and that they contradicted the principle of empowering local governments, not Washington, to set policy.

Barney Frank, D-Mass., said it was inconsistent for Republicans to reject targeting federal grants for specific police hiring or prevention programs while supporting numerous federal conditions for prison building grants. "The operating principle is not states' rights, it's states doing what we want," he said.

Schumer said few states would be able to qualify for the prison aid, and far fewer prisons would be built than under existing law. He offered an amendment to restructure the aid into a block grant to states without the strict sentencing requirements.

But several Republicans said that if the federal government was going to help states with this expense, it was critical that states move toward tougher sentences. McCollum pointed out that the toughest sentencing requirements applied only to half the available funds, and said many states should be able to qualify for the other half.

Schumer's amendment drew support from two Republicans and most Democrats, but was defeated 12-17.

One issue that did not split along clear party lines was a proposal, sponsored by Steve Chabot, R-Ohio, to ban weightlifting equipment and strength training in federal prisons. Chabot and others said it was foolish to let prisoners become stronger when they may turn that strength against new victims upon release. The amendment passed 18-9, with some bipartisan support and apprehensions.

The bill also includes a controversial section, not in the comprehensive bill first presented by House Republicans (HR 3), that would restrict the court orders that judges can impose in prison crowding suits.

The proposal, based on a bill sponsored by Charles T. Canady, R-Fla., aims to diminish prison population caps or other politically unpopular remedies ordered by courts in response to prison condition lawsuits.

But some committee Democrats said the provisions would make it harder to settle such cases without

protracted litigation, and that they go too far in limiting the legal rights of inmates. Robert C. Scott, D-Va., sought to delete the provisions, but failed on a 5-25 vote.

Block Grants

Lawmakers turned to the proposed block grant program (HR 728) on Feb. 2. McCollum trumpeted the proposal as a blow for local autonomy. "It is a rejection of the Washington-knows-



Most Schumer amendments failed.

best mindset that gave us the 1994 crime bill," he said. But Conyers called it a "100 percent federally funded giveaway of \$10 billion."

Democrats warned that the program was so flexible it would invite waste or disappear into local budgets. They made energetic pleas not to disrupt the newly established grant programs, particularly the police hiring program, a major priority of the Clinton administration. Schumer tried to convince Republicans that they had a stake in the program, reciting the number of new officers approved for communities in their districts.

F. James Sensenbrenner Jr. R-Wis., was not impressed: "This is an executive branch pork barrel." Republicans said many communities could not afford to apply for the program which, unlike the proposed block

grants, requires local matching funds.

A Schumer amendment to preserve the hiring program and its six-year, \$8.8 billion authorization was defeated, 13-19.

Subsequent attempts to protect some or all existing authorizations for the crime prevention programs were defeated by similar margins.

Lawmakers did add several items to the list of suggested uses for the block grants, such as drug courts.

But Republicans balked at specifying that the money could be used to combat violence at abortion clinics, although local officials presumably could choose to do so. Patricia Schroeder, D-Colo., offered the amendment on clinic violence, which was defeated 13-19.

After a long day of debate, panel members approved the bill, 21-13, with support from only one Democrat, Rick Boucher of Virginia.

Death Row Appeals

The committee approved a bill to limit death row appeals (HR 729) by a 24-10 vote, the first step toward changes conservatives have long sought in the so-called habeas corpus process.

The bill sets time limits and other restrictions on habeas corpus appeals, aimed primarily at death penalty cases. Conservatives say criminals have been able to make a mockery of the death penalty by dragging out their execution dates for years with such appeals.

Critics say such changes should only be made in conjunction with assurances that defendants in death penalty cases receive a fair trial and other safeguards against wrongful executions.

The bill takes a step in that direction, tying most of the new limits on death row appeals to a requirement that states provide counsel for post-conviction proceedings.

Democratic lawmakers and others have said this does not go far enough. During the markup, Schumer offered an amendment to require that states provide adequate lawyers for the trial itself, not just subsequent legal proceedings. It was defeated, 14-19.

McCollum said states probably should meet Schumer's terms, but as a practical matter some were unlikely to do so. He said the bill's requirements represented a realistic assessment of what states were willing or able to provide in exchange for tighter rules on federal appeals.

Four Democrats ultimately joined committee Republicans in supporting the overall bill. ■